



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/728,727	12/05/2003	Mark E. Herrmann	R0586-701110	1722
------------	------------	------------------	--------------	------

37462 7590 11/03/2006

LOWRIE, LANDO & ANASTASI
RIVERFRONT OFFICE
ONE MAIN STREET, ELEVENTH FLOOR
CAMBRIDGE, MA 02142

EXAMINER

LEE, BENJAMIN WILLIAM

ART UNIT

PAPER NUMBER

3709

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/728,727	Applicant(s) HERRMANN ET AL.	
	Examiner Benjamin W. Lee	Art Unit 3709	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12-5-2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8-15-2005; 2-27-2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: ref. no. 222 (process) on page 29, line 20.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: ref no. 110 in Fig. 1g, ref no. 142 in Fig. 4, ref no. 210 in Fig. 5, ref no. 216 in Fig. 5, ref no. 220 in Fig. 5, ref no. 302 in Figs. 6 and 7, ref no. 304 in Figs. 6 and 8, and ref no. 306 in Figs. 6 and 9.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because “content drawn” on line 3 should be changed to -- content is drawn --. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities:

Page 8, line 23: “calls” should be changed to -- cells --.

Page 10, line 29 - Page 11, line 3: this section should be deleted because it is redundant.

Page 11, lines 8-9: this sentence should be deleted because it is redundant.

Page 11, lines 23-26: this sentence should be deleted because it is redundant.

Page 19, line 4: “item of 126” is suggested to be -- item 126 of Fig. 4 --.

Page 20, lines 23-24: this section is suggested to be changed to -- The final payout may also be affected by bonus play, which is well-known in the gaming industry. --.

Page 26, line 26: the second occurrence of “data” in this line is suggested to be changed to -- data structure --.

Appropriate correction is required.

Claim Objections

5. Claims 9, 18, 19, and 29 are objected to because of the following informalities:

Claim 9, line 3: “the at least one game card” should be changed to -- at least one game card --.

Claim 18, line 1: “the game session” should be changed to -- a game session --.

Claim 19, line 1: “the game session” should be changed to -- a game session --.

Art Unit: 3709

Claim 29, line 4: "the at least one game card" should be changed to -- at least one game card --.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-11 are directed toward a "method for conducting a game." The inventions disclosed in claims 1-11 are processes, which is one of the four statutory categories of invention (e.g. process, machine, manufacture, and composition of matter). However, the inventions disclosed in claims 1-11 include the judicial exception of an abstract idea ("providing for an entry of at least one player in the game"). No physical transformation is present in claims 1-11 to establish a practical application of the abstract idea. Furthermore, claims 1-11 do not have useful, concrete, and tangible results. "[P]roviding for an entry of at least one player in the game; and providing, to the at least one player, an alternative method of entry (AMOE) to the game," as disclosed in claim 1, is not a concrete, tangible result. Claims 2-7 and claim 11 are dependent on claim 1 and do not disclose a further method step or method steps. Thus, claims 2-7 and claim 11 also lack concrete, tangible results. "[P]roviding to the at least one player an indication of a game session to be entered by the alternative method of entry (AMOE)," as

Art Unit: 3709

disclosed in claim 8, is useful and may be tangible, but is not concrete since the method step is only “providing” an indication and thus does not ensure repeatability. “[D]etermining a payout,” as disclosed in claim 9, is useful and concrete, but is not tangible since a real-world result is not guaranteed. Claim 10 is dependent on claim 9 and does not disclose a further method step or method steps. Thus, claim 10 also lacks a tangible result.

Claims 12-24 are directed toward a “wagering game.” A “wagering game” does not fall under one of the four statutory categories of invention. A “wagering game” is not a process, machine, manufacture, or composition of matter. The inventions disclosed in claims 12-24 include the judicial exception of an abstract idea (“a game player plays the wagering game through the use of an alternative method of entry (AMOE)”). Claims 12-24 do not provide practical applications by resulting in physical transformations or by producing useful, concrete, and tangible results.

Claims 25-35 are directed toward a “computer-readable medium.” A “computer-readable medium” is a manufacture and thus falls under the four statutory categories of invention. However, the computer-readable medium implements the methods disclosed in claims 1-11. Therefore, the inventions disclosed in claims 25-35 still have the same deficiency as claims 1-11 (lack of useful, concrete, and tangible results).

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3709

9. Claims 3, 21, and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 3 recites the limitation “the game is a wagering game of skill.” Claim 21 recites the limitation “the wagering game is a wagering game of skill.” The specification does not provide full disclosure of how to provide an alternative method of entry (AMOE) for a game of skill. The game disclosed in the specification consists of elements of bingo and keno. Both bingo and keno are considered to be games of chance. A game of skill is a game where the outcome is determined by the player’s skill rather than chance. The skill-level of the player of the disclosed game does affect the outcome of the disclosed game. Therefore, the disclosed game is a game of chance.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 9 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3709

Re claim 9: The claim recites the limitation "the wagering game of chance" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to be -- the game --.

Re claim 29: The claim recites the limitation "the wagering game" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to be -- the game --.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1, 2, 4-10, 12-14, 16-20, 22, 23, 25-31, 33, and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Itkis et al. (US 2003/0171986 A1).

Re claim 1: Itkis et al. discloses a method comprising acts of providing for an entry of at least one player in the game (see paragraph [0020], lines 4-8), and providing, to the at least one player, an alternative method of entry (AMOE) to the game (see paragraph [0020], lines 4-8).

Art Unit: 3709

Providing free game tickets to players constitutes providing entry of at least one player in the game and an alternative method of entry since the tickets are free (see paragraph [0007]; paragraph [0008]; paragraph [0012], lines 1-6).

Re claim 2: Itkis et al. further discloses that the game is a wagering game of chance (see paragraph [0013]). The winner is randomly selected.

Re claim 4: Itkis et al. further discloses that the game has fixed odds of winning the game (see paragraph [0032], lines 27-33).

Re claim 5: Itkis et al. further discloses that the game has non-fixed odds of winning the game (see paragraph [0020], lines 11-14). Since there is only one winning bingo card, the odds of winning are dependent upon how many bingo cards are issued.

Re claim 6: Itkis et al. further discloses that the game is conducted over a communication network (see Fig. 1; paragraph [0019], lines 11-12).

Re claim 7: Itkis et al. further discloses that the act of providing an entry of the at least one player in the game includes an act of entering the at least one player in a game session following a processing of an entry request of the at least one player by the alternative method of entry (AMOE) (see paragraph [0020]). A player is issued a free ticket after that player passes their player card through a magnetic card reader.

Re claim 8: Itkis et al. further discloses the act of providing to the at least one player an indication of a game session to be entered by the alternative method of entry (AMOE) (see Fig. 2). The start time of the game and other information is shown on the ticket as depicted in Fig. 2.

Re claim 9: Itkis et al. further discloses an act of conducting the wagering game of chance, the act of conducting further comprising acts of determining, for the at least one player, at least one game card having a pattern (10), determining, prior to a game session, a winning pattern (13), drawing winning cell content from a predetermined set of cell content (39 and 40), determining if, for the at least one player, whether the pattern of cell content on the game card matching the drawn winning cell content makes a pattern matching the winning pattern (39), and if so, determining payout (43) (see Figs. 1 and 2; paragraph [0020]; paragraph [0024]-[0026]).

Re claim 10: Itkis et al. further discloses the act of determining the payout includes an act of determining the payout based upon a fixed odds of winning (see paragraph [0032], lines 27-33).

Re claim 12: Itkis et al. discloses a wagering game wherein a game player plays the wagering game through the use of an alternative method of entry (AMOE) (see paragraph [0020], lines 4-8). Providing free game tickets to players constitutes an alternative method of entry since the tickets are free (see paragraph [0007]; paragraph [0008]; paragraph [0012], lines 1-6).

Re claim 13: Itkis et al. further discloses the wagering game is available to be played on a communication network (see Fig. 1; paragraph [0019], lines 11-12).

Re claim 14: Itkis et al. further discloses that the communication network includes at least one of a cable system, the Internet, or wireless network (see Fig. 1; paragraph [0019], lines 11-12).

Re claim 16: Itkis et al. further discloses that the AMOE is performed by an act of submitting an entry to the wagering game over the Internet (see Fig. 1; paragraph [0022], lines 45-48).

Re claim 17: Itkis et al. further discloses a game session associated with the wagering game is provided with an entry by AMOE (see paragraph [0020]).

Re claim 18: Itkis et al. further discloses a game session entered is the next starting game session after the AMOE is received and logged by the game operator (see Fig. 1; paragraphs [0022]-[0023]).

Re claim 19: Itkis et al. further discloses a game session entered is the next starting game session designated for AMOE game players after the AMOE is received and logged by a game

Art Unit: 3709

operator (see Fig. 1; paragraphs [0022]-[0023]). All games are designated for AMOE game players since all players enter by AMOE.

Re claim 20: Itkis et al. further discloses the wagering game is a wagering game of chance (see paragraph [0013]).

Re claim 22: Itkis et al. further discloses the wagering game has fixed odds of winning the game (see paragraph [0032], lines 27-33).

Re claim 23: Itkis et al. further discloses the wagering game has non-fixed odds of winning the game (see paragraph [0020], lines 11-14). Since there is only one winning bingo card, the odds of winning are dependent upon how many bingo cards are issued.

Re claim 25: Itkis et al. discloses a computer-readable medium having computer-readable signals stored thereon that define instructions that, as a result of being executed by a computer, instruct the computer to perform a method for conducting a game, the method comprising acts of providing for an entry of at least one player in the game and providing, to the at least one player, an alternative method of entry (AMOE) to the game. (see paragraph [0020], lines 4-8; paragraph [0007]; paragraph [0008]; paragraph [0012], lines 1-6). Although Itkis et al. is silent with respect to the specific type of computer-readable medium, it is believed that PC-compatible computers and servers inherently contain memory subsystems (RAM, ROM, hard disks, external storage, etc.) (see paragraph [0019], lines 11-15; paragraph [0022], lines 1-5).

Re claim 26: Itkis et al. further discloses the act of conducting the game over a communication network (see Fig. 1; paragraph [0019], lines 11-12).

Re claim 27: Itkis et al. further discloses the act of providing an entry of the at least player in the game includes an act of entering the at least one player in a game session following the processing of an entry request of the at least one player by the alternative method of entry (AMOE) (see paragraph [0020]). A player is issued a free ticket after that player passes their player card through a magnetic card reader.

Re claim 28: Itkis et al. further discloses the method further comprises an act of providing to the at least one player an indication of a game session to be entered by the alternative method of entry (AMOE) (see Fig. 2). The start time of the game and other information is shown on the ticket as depicted in Fig. 2.

Re claim 29: Itkis et al. further discloses the method further comprises an act of conducting a wagering game, the act of conducting further comprising acts of determining, for the at least one player, at least one game card having a pattern (10), determining, prior to a game session, a winning pattern (13), drawing winning cell content from a predetermined set of cell content (39 and 40), determining if, for the at least one player, whether the pattern of cell content on the game card matching the drawn winning cell content makes a pattern matching the winning

Art Unit: 3709

pattern (39), and if so, determining payout (43) (see Figs. 1 and 2; paragraph [0020]; paragraph [0024]-[0026]).

Re claim 30: Itkis et al. further discloses the act of determining the payout includes an act of determining the payout based upon a fixed odds of winning (see paragraph [0032], lines 27-33).

Re claim 31: Itkis et al. further discloses the game is a wagering game of chance (see paragraph [0013]). The winner is randomly selected.

Re claim 33: Itkis et al. further discloses the game has fixed odds of winning the game (see paragraph [0032], lines 27-33).

Re claim 34: Itkis et al. further discloses the game has non-fixed odds of winning the game (see paragraph [0020], lines 11-14). Since there is only one winning bingo card, the odds of winning are dependent upon how many bingo cards are issued.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3709

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claims 3, 21, and 32 as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Itkis et al. in view of Langan (US 5,782,470).

Re claims 3, 21, and 32: The teachings of Itkis et al. as applied to claims 1, 12, and 25, respectively, have been discussed above.

However, Itkis et al. fails to disclose or fairly suggest a wagering game of skill.

Langan teaches a wagering game of skill in which the outcome of the game is dependent upon the ability of the player in predicting the real-life performance of selected professional sports players (see col. 4, lines 5-14).

Therefore, in view of Langan, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the bingo game of Itkis et al. with the wagering game of skill of Langan in order to attract more customers at bars and similar establishments by providing sports-themed sweepstakes-type games to the customers.

17. Claims 11, 15, 24, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itkis et al. in view of Fioretti (US 5,351,970).

Art Unit: 3709

Re claims 11, 24, and 35: The teachings of Itkis et al. as applied to claims 1, 12, and 25, respectively, have been discussed above.

However, Itkis et al. fails to disclose or fairly suggest providing for an entry of the at least one player in at least two game sessions.

Fioretti teaches a system for playing bingo over a wide geographic area by subscription. Subscribing allows players to order game card arrays for future bingo game sessions in advance from on-line point of sale terminals (see col. 6, lines 3-8).

Therefore, in view of Fioretti, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the subscription feature of Fioretti to the linked promotional bingo game of Itkis et al. in order to further attract more customers at bars and similar establishments by giving players several chances of winning by playing several games.

Re claim 15: The teachings of Itkis et al. with respect to claim 12 have been discussed above.

However, Itkis et al. fails to disclose or fairly suggest the AMOE is performed by an act of submitting an entry to the wagering game by mail.

Fioretti teaches bingo games can be modified to allow players to play from home by submitting an entry to the wagering game by mail.

Therefore, in view of Fioretti, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adapt the linked promotional bingo game of Itkis et al. to allow players to participate at home by submitting an entry to the game by mail in order to make it more convenient and enticing for players to participate in the game.

Double Patenting

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 1, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, 25, 26, 27, 28, and 31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, and 32, respectively, of copending Application No. 11/049,399.

Re claims 1, 3-8, and 11: Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claimed invention obviously encompasses the claimed invention of the ‘399 Patent Application and differ only in the terminology.

Art Unit: 3709

For instance, in claim 1 of the present claimed invention, the Applicants recite: “A method for conducting a game, the method comprising acts of: providing for an entry of at least one player in the game; and providing, to the at least one player, an alternative method of entry (AMOE) to the game.”

Whereas, in claim 1 of the ‘399 Patent Application, the Applicants claim: “A method for conducting a tournament-style game, the method comprising acts of: providing for an entry of at least one player into the tournament-style game; and providing, to the at least one player, an alternative method of entry (AMOE) into the tournament-style game.”

Accordingly, in respect to the above discussions, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of claim 1 of the ‘399 Patent Application as general teachings for a method for conducting a game. The instant claims obviously encompass the claimed invention of the ‘399 Patent Application.

Re claims 12-19, 24-28, and 31: Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claimed invention obviously encompasses the claimed invention of the ‘399 Patent Application and differ only in the terminology.

For instance, in claim 12 of the present claimed invention, the Applicants recite: “A wagering game wherein a game player plays the wagering game through the use of an alternative method of entry.”

Art Unit: 3709

Whereas, in claim 15 of the '399 Patent Application, the Applicants claim: "A wagering game of skill wherein a game player is eligible to play the wagering game of skill through the use of an alternative method of entry (AMOE)."

Accordingly, in respect to the above discussions, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of claim 15 of the '399 Patent Application as a general teachings for a wagering game of skill. The instant claims obviously encompass the claimed invention of the '399 Patent Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goldfarb discloses a method of playing a game of chance at locations remote from the game site. Luciano, Jr. et al. discloses a networked multiple bingo system. Malone discloses a method and system for operating a bingo game on the Internet. Hiles et al. discloses a system and method of playing a publication-based game of chance through the Internet.

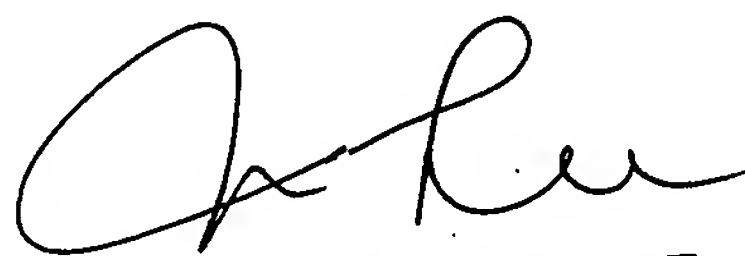
21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin W. Lee whose telephone number is 571-270-1346. The examiner can normally be reached on Mon - Thurs (7:30AM-5PM), or Alt. Fri (7:30AM-4PM).

Art Unit: 3709

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jong-Suk (James) Lee can be reached on 571-272-7044. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

bwl/
Benjamin W. Lee
October 16, 2006



JONG SUK LEE
SUPERVISORY PATENT EXAMINER